THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.33812 OF 1997

Dated: 6th July, 2006.

Between:

Saaketa Consultants Ltd., rep. by
its Managing Director Naveen Chandra,
S/o. T. Kotaiah, aged 37 years,
R/o.1-1-293/4, Ground Floor,
Mehta Towers, Ashok Nagar, Hyderabad. ..... PETITIONER

AND

1. The Canara Bank, by Chief Manager,
   Narayanaguda Branch, Hyderabad,
   And another. .....RESPONDENTS

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.33812 OF 1997

O R D E R :

This writ petition is filed aggrieved by the order passed by the 2nd respondent - Banking Ombudsman for the State of A.P., dated 19-6-1997 rejecting the complaint made by the writ petitioner under Section -21 of the Banking Ombudsman Scheme, 1995.

The facts, in brief, are as under :

The petitioner claims to be a company registered under the Companies Act, 1956. It is stated that the petitioner has a current account bearing No.2196 with the 1st respondent – Canara Bank, Narayanaguda Branch, Hyderabad to be operated jointly by two Directors of the petitioner company. It is alleged that on 20-7-1996 a cheque for Rs.9,00,000/- (Rupees Nine lakh only) was issued by only one of the Directors of the petitioner company which was honoured by the 1st respondent Bank contrary to the instructions of the petitioner that the account has to be operated jointly by two Directors. The petitioner came to know about the unauthorised payment on 8-1-1997 when the statement of account was furnished by the 2nd respondent. Immediately, on 9-1-1997, the discrepancy was pointed out to the 1st respondent, with a request to credit the amount of Rs.9 lakhs to the petitioner's account. Since the 1st respondent gave evasive replies, the petitioner got issued notice 20-1-1997 through its Counsel calling upon the 1st respondent Bank to credit the amount of Rs.9 lakhs with interest at 24% per annum to the account of the petitioner. The 1st respondent Bank got issued a reply dated 8-2-1997 taking all untenable pleas. In the circumstances, the petitioner company raised a dispute before the 2nd respondent, which was

entertained as Complaint No.272 of 1997. After hearing both the parties, the 2nd respondent passed the impugned order 19-6-1997 rejecting the complaint of the petitioner. Hence, this writ petition.

It is not in dispute that the 2nd respondent which was appointed under the Banking Ombudsman Scheme, 1995 can entertain complaints concerning deficiency in Banking Services. Under Section 18 of the Scheme, the Banking Ombudsman shall cause a notice of the receipt of any complaint to the Bank named in the complaint and shall endeavour to promote a settlement of the complaint between the complainant and the Bank through conciliation or mediation. If the complaint is not settled by agreement within a period of one month from the date of receipt of the complaint, under Section 19, the Banking Ombudsman has to make a recommendation by reference to what is, in his opinion, fair in all the circumstances. The copies of such recommendation shall be sent to the Complainant and the Bank concerned. If the Complainant accepts the recommendation, the Banking Ombudsman shall cause a copy of the said letter of acceptance to be forwarded to the Bank for compliance by it with the terms of the recommendation. If such recommendation is not acceptable to the Bank, the Banking Ombudsman shall inform the parties of his intention to pass an award and thereafter under Section 20 (3), an award shall be passed after affording the parties reasonable opportunity to present their case.

In the light of the above provisions, the petitioner contended that the 2nd respondent is bound to follow the mandatory procedure prescribed under Sections 18 and 19 of the Scheme and shall make an attempt to promote a settlement between the Complainant and the Bank through conciliation. It is alleged that since the 2nd respondent passed the impugned order without trying for a settlement or without making any recommendation as provided under the Scheme, the impugned order is arbitrary and illegal.

At the outset, it is to be noted that the impugned order dated 19-6-1997 is not an award as claimed by the petitioner. It is an order passed by the 2nd respondent under Section 21 of the Scheme rejecting the complaint. Section 21 of the Scheme may be extracted hereunder :

> *"The Banking Ombudsman may reject the complaint at any stage if it appear to him that the complaint is made without any sufficient cause or that it is not pursued by the complainant with reasonable diligence or that prima facie there is no loss or damage or inconvenience suffered by the complainant."*

A bare perusal of the above provision shows that the complaint can be rejected at any stage on the ground that;

(a) the complaint was made without any sufficient cause;
(b) it is not pursued by the complainant with reasonable diligence;
(c) prima facie, there is no loss or damage or inconvenience suffered by the complainant.

In the case on hand, the specific allegation made by the petitioner in the complaint before the 2nd respondent was that there was deficiency in the services of the 1st respondent Bank in making the payment on the basis of an invalid cheque since it was signed by only one of the Directors of the petitioner company. However, the complaint was absolutely silent about any loss occasioned thereby to the petitioner.

The 1st respondent Bank pleaded that the cheque was paid in good faith and without any mala fide intention and the petitioner company did not suffer any loss as it was regular payment made by the petitioner company to one of its creditors. The 2nd respondent, having heard both the parties, opined that there were no mala fides on the part of the 1st respondent Bank in honouring the cheque. It was also observed that the complainant had not lost the right of recovery against

the sub-broker or the payee.

Having regard to the facts and circumstances of the case on hand, I am unable to hold that the 2nd respondent committed any error in rejecting the complaint of the petitioner. As noted above, under Section 21 the complaint can be rejected at any stage of the proceedings by the Banking Ombudsman on any of the three grounds specified thereunder. One of the grounds is the prima facie satisfaction of the Banking Ombudsman that the complainant has not suffered any loss or damage or inconvenience.

In the case on hand, either in the complaint made to the 2nd respondent or in the affidavit filed in support of this writ petition, there was no plea of any loss to the petitioner on account of the acceptance of the cheque in question by the 1st respondent Bank.

The only contention raised by the petitioner is that the 2nd respondent failed to adhere to the procedure contemplated under Sections 18 & 19 of the Scheme by taking steps for settlement between the parties. Such procedure cannot be held to be mandatory when the complaint is rejected on any of the grounds mentioned under Section -21 of the Scheme. Since, in the case on hand, the complaint was rejected by the 2nd respondent under Section-21 of the Scheme, the impugned order cannot be held to be illegal merely on the ground that the procedure under Sections 18 & 19 was not followed.

So far as the allegation of collusion and fraud is concerned, the 2nd respondent has rightly observed that it is a matter for a detailed enquiry on the basis of the evidence that may be adduced by the parties and therefore outside the purview of the Scheme. Accordingly, the petitioner is granted liberty to work out the appropriate remedy as

available under law for redressal of his grievance, if any. It is made clear that the finding recorded by the 2nd respondent that there are no mala fides on the part of the 1st respondent Bank is a prima facie opinion and shall not come in the way in the event of the petitioner instituting any fresh proceedings before the appropriate forum.

With the above observations, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 6-7-2006

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